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EXAMINER

LELE, TANMAY S

ART UNIT

PAPER NUMBER

2681

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/407,149

Applicant(s)

HENDERSON, P. MICHAEL

Examiner

Tanmay S Lele

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☒ The proposed drawing correction filed on 21 October 2002 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: see attached response by examiner

Response to Arguments

1. Applicant's arguments filed 22 October 2002, have been fully considered but they are not persuasive.
2. Regarding claim 21. In response to Applicant's argument that the claimed subject matter was contained in the specification, it is noted that the specification does describe a scenario where either an AM or FM modulated signal is used and broadcast in the respective AM or FM frequency band. It is not noted in the specification that a first frequency modulated signal (as claimed in the independent claim 17) is again amplitude modulated (as stated in claim 22). This is how the claims were interpreted as written. In further regards that the rejection is improper, note that, Lowe states, "...the system could be designed such that each band demodulates down to an intermediate band other than the FM band," (Lowe, column 7, lines 3 – 6) thus teaching that the system could indeed utilize other frequencies (as mentioned in the previous office action). Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.
3. Regarding claim 1. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a localized area is described as a short distance where radio signals may be transmitted without a FCC or local license requirement) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case applicant states, "broadcasting the analog information at low power in a localized area in at least one pre-selected radio frequency." Low power and localized area are all

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relative terms, based on many physical phenomena such as frequency, terrain, and ambient conditions, for example. None of these characteristics were claimed and thus the Boys reference meets the above requirements, in that analog systems can be used in cellular communications (as is commonly known in the art), transmissions are local, the receiver locks (or tunes) to one specific frequency for reception, and audio is communicated. Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.

4. Regarding claim 4 in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., states that low power transmission, less than about 100 milliwatts, is desirable because it does not require a FCC license) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, the FCC does have guidelines for all radio frequency emitting devices (Part 15, sections 15.219, 15.221, and 15.239 in this case) and it should be further noted that the permitted levels are different between the AM and FM frequency bands. Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.

5. Regarding claim 11, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a localized area is described as a short distance where radio signals may be transmitted without a FCC or local license requirement) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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In this case applicant states, "broadcasting the analog information at low power in a localized area in at least one pre-selected radio frequency." Low power and localized area are all relative terms, based on many physical phenomenons such as frequency, terrain, and ambient conditions, for example. None of these characteristics were claimed and thus the Boys reference meets the above requirements, in that analog systems can be used in cellular communications (as is commonly known in the art), transmissions are local, the receiver locks (or tunes) to one specific frequency for reception, and audio is communicated. Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.

6. Regarding claim 17, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a localized area is described as a short distance where radio signals may be transmitted without a FCC or local license requirement) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case applicant states, "broadcasting the analog information at low power in a localized area in at least one pre-selected radio frequency." Low power and localized area are all relative terms, based on many physical phenomenons such as frequency, terrain, and ambient conditions, for example. None of these characteristics were claimed and thus the Boys reference meets the above requirements, in that analog systems can be used in cellular communications (as is commonly known in the art), transmissions are local, the receiver locks (or tunes) to one specific frequency for reception, and audio is communicated. Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.

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7. Regarding claim 3, in response to applicant's argument that both references teach away from using the FM or AM band, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Further, the Lowe reference incorporates US Patent No. 5,410,735 (Borchardt) into it, which specifically states the use of down converting from a higher frequency into an FM range such that conventional, commonplace receivers can access this information and Lowe makes reference to this (column 6, line 63 –67). Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.

8. Regarding claim 5, in response to applicant's argument that the references do not teach "wherein the broadcasting of the analog information is initiated at a predetermined time and in a predetermined frequency," a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Applicant attempts to overcome the rejection by stating Lowe fails to disclose broadcasting at a predetermined time. Lowe further states this feature where the system determines what is

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viewed and when (column 3, lines 20– 40 and lines 55 - 60) as well as covering the issue of time.

Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.

9. Regarding claim 12, in response to applicant's argument that "means for programming comprising a program for setting a time to activate the means for broadcasting," is not disclosed, taught, or suggested by either Boys or Lowe, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Note further, applicant does not state who is programming or setting up the broadcast, merely states means for doing such (current user or the owner of such a device). Thus, Lowe discloses this as previously stated and further discloses setting a time to activate the means for broadcasting (column 3, lines 55 – 60). Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.

10. In regards to claim 16, in response to applicant's argument that means for storing received digital information for broadcasting at a later time," is not taught, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136

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USPQ 458, 459 (CCPA 1963). Applicant attempts to overcome the rejection by quoting from Lowe (column 8, line 24 – 28), which relates to a controller and IR link. On the subsequent pages though, as stated in the prior office action, Lowe states the receiver does contain a memory (column 9, lines 6 – 19) and further teaches of larger memory storage units in column 10, lines 57 – 63). Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.

11. In regards to claim 18, in response to applicant's argument that "storing the received digital information before converting the digital information to analog information" is not taught, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Further, the arguments state, "additionally and notwithstanding the foregoing reasons for allowability of independent claim 11, dependent claim 17 recites further features and/or combinations of features (as is apparent by examination of the claim itself) that are patentably distinct from the prior art of record." Claim 18 depends on claim 17 and thus the reference to claim 11 is not understood. Furthermore, Lowe does include such provisions, as stated in prior actions (column 10, lines 47 – 65). Hence, Examiner is not persuaded by the Applicant's argument that the rejections are improper.


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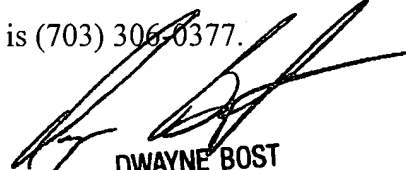
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tanmay S Lele whose telephone number is (703) 305-3462. The examiner can normally be reached on 9 - 6:30 PM Mondays - Thursdays and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne Bost can be reached on (703) 305-4778. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.


Tanmay S Lele
Examiner
Art Unit 2681


DWAYNE BOST
SUPERVISORY PATENT EXAMINER
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tsl
November 15, 2002